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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,283		02/14/2002	Matthias Rath	11957/20 3317	
26646	7590	09/14/2005		EXAMINER	
KENYON ONE BROA		ON	MARX, IRENE		
NEW YORK, NY 10004		0004		ART UNIT PAPER NUMBER	
	•			1651	

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)	
Advisory Action	10/077,283	RATH, MATTHIAS	
Before the Filing of an Appeal Brief	Examiner	Art Unit	
	Irene Marx	1651	
The MAILING DATE of this communication appe	ears on the cover sheet with the c	correspondence add	ress
THE REPLY FILED 29 August 2005 FAILS TO PLACE THIS A	APPLICATION IN CONDITION FOR	R ALLOWANCE.	
<ol> <li>The reply was filed after a final rejection, but prior to filir applicant must timely file one of the following replies: (1) application in condition for allowance; (2) a Notice of Ap Request for Continued Examination (RCE) in compliance time periods:</li> <li>a) The period for reply expiresmonths from the mailing</li> </ol>	) an amendment, affidavit, or other peal (with appeal fee) in complianc e with 37 CFR 1.114. The reply mu	evidence, which plac e with 37 CFR 41.31;	es the or (3) a
b) The period for reply expiresminimum item mailing date of this Adverse, will the statutory period for reply expire later the	visory Action, or (2) the date set forth in th		er is later. In no
Examiner Note: If box 1 is checked, check either box (a) or (b) MONTHS OF THE FINAL REJECTION. See MPEP 706.07(	). ONLY CHECK BOX (b) WHEN THE FI f).	IRST REPLY WAS FILE	
Extensions of time may be obtained under 37 CFR 1.136(a). The date on been filed is the date for purposes of determining the period of extension a CFR 1.17(a) is calculated from: (1) the expiration date of the shortened st above, if checked. Any reply received by the Office later than three month earned patent term adjustment. See 37 CFR 1.704(b).  NOTICE OF APPEAL	and the corresponding amount of the fee. atutory period for reply originally set in the	The appropriate extension final Office action; or (2)	on fee under 37 as set forth in (b)
2. The reply was filed after the date of filing a Notice of Approximate was filed on 29 August 2005. A brief in compliance with Notice of Appeal (37 CFR 41.37(a)), or any extension the Notice of Appeal has been filed, any reply must be filed.	37 CFR 41.37 must be filed within ereof (37 CFR 41.37(e)), to avoid d	two months of the daismissal of the appear	ate of filing the
AMENDMENTS  3. ☑ The proposed amendment(s) filed after a final rejection, (a)☑ They raise new issues that would require further of			pecause
(b) ☐ They raise the issue of new matter (see NOTE bell (c) ☐ They are not deemed to place the application in believed.	low);	•	g the issues for
appeal; and/or (d)☐ They present additional claims without canceling a	a corresponding number of finally re	ejected claims.	
NOTE: see attachment. (See 37 CFR 1.116 and	41.33(a)).		
4. The amendments are not in compliance with 37 CFR 1.		ompliant Amendment	(PTOL-324).
<ul> <li>5. Applicant's reply has overcome the following rejection(s)</li> <li>6. Newly proposed or amended claim(s) would be a</li> </ul>		timely filed emendm	ont concoling
the non-allowable claim(s).	nowable il submitted in a separate,	timely filed amendin	ent cancenng
7. For purposes of appeal, the proposed amendment(s): a) the new or amended claims would be rejected is provide The status of the claim(s) is (or will be) as follows: Claim(s) allowed:		be entered and an ex	planation of how
Claim(s) objected to: Claim(s) rejected: 1 and 23-25.			
Claim(s) withdrawn from consideration: 4-7,10-22 and 2	<u>6</u> .		
AFFIDAVIT OR OTHER EVIDENCE			41 4 1
<ol> <li>The affidavit or other evidence filed after a final action, b because applicant failed to provide a showing of good ar and was not earlier presented. See 37 CFR 1.116(e).</li> </ol>			
9. The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to showing a good and sufficient reasons why it is necessarily	overcome <u>all</u> rejections under appe ry and was not earlier presented. S	al and/or appellant fa See 37 CFR 41.33(d)(	nils to provide a (1).
10. ☐ The affidavit or other evidence is entered. An explanation REQUEST FOR RECONSIDERATION/OTHER		-	
11. The request for reconsideration has been considered by see attachment.	ut does NOT place the application i	n condition for allowa	ince because:
12.  Note the attached Information Disclosure Statement(s).	(PTO/SB/08 or PTO-1449) Paper	No(s)	

13. Other: \_\_\_\_.

Irene Marx Primary Examiner Art Unit: 1651 Application/Control Number: 10/077,283

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Note:

The proposed amendment raises new issues that would require further consideration and/or search with respect to the changes to the preamble and to the ingredients of claims 23-25, including new issues under 37 C.F.R. § 112 and of new matter. For example, there is no clear basis or support for the addition of calcium and manganese from Table 5 in preference to any of the other ingredients from this table which are not part of "a daily dosage" composition.

## Response to Arguments

Applicant's arguments have been fully considered but they are not deemed to be persuasive. Regarding applicant's argument that basis for "A daily dosage of a composition" is found at page 5, lines 29-32, it is noted that this section of the specification broadly states:

"The daily intake of the metabolic compounds of the Krebs cycle is further enhanced by the addition of ascorbate, thiamine, riboflavin, certain minerals and trace elements and other cofactors for the enzymatic reaction in this cycle. Optimum supply of these coenzymes can compensate -at least in part- for the insufficient availability of the enzyme itself due to a genetic defect, e.g., fumarase deficiency."

The relevance of this statement to the invention as now claimed is not delineated with any particularity.

The further arguments are directed to claims that are not entered. Therefore, these arguments are not persuasive of error in the rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June Viant .
Irene Marx
Primary Examiner
Art Unit 1651